IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 25, 2006 Session

STATE OF TENNESSEE v. CHARLES JOSHUA COLLINS

Appeal from the Circuit Court for Sevier County
No. 10094-II Richard R. Vance, Judge

No. E2005-02152-CCA-R3-CD Filed October 5, 2006

The Appellant, Charles Joshua Collins, was convicted by a Sevier County jury of rape of a child, a Class A felony. The trial court subsequently sentenced Collins to twenty-three years in the Tennessee Department of Correction. On appeal, he raises the following issues for our review: (1) whether there was sufficient evidence to support his conviction; (2) whether the prosecution's untimely production of the redacted version of his statement to the police was error and whether the introduction of a codefendant's statement at trial violated Collins' right of confrontation as interpreted by the Supreme Court in *Crawford v. Washington*; and (3) whether the State withheld exculpatory evidence in violation of *Brady v. Maryland*. After review of the issues presented, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

DAVID G. HAYES, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, and J.C. MCLIN, JJ., joined.

Ross B. Gray, Sevierville, Tennessee, for the Appellant, Charles Joshua Collins.

Paul G. Summers, Attorney General and Reporter; David E. Coenen, Assistant Attorney General; Al C. Schmutzer, Jr., District Attorney General; and Steven R. Hawkins, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Factual Background

The Appellant and the codefendant, Bruce Olson, were tried in an October, 2003 joint trial on separate indictments which charged them with rape of a child. The jury found both the Appellant and the codefendant guilty of the indicted offense. The codefendant appealed his conviction, and it was affirmed by a panel of this court in January, 2006. *State v. Bruce E. Olson*, No. E2005-00663-CCA-R3-CD (Tenn. Crim. App. at Knoxville, Jan. 23, 2006).

At trial, it was established that Carmen and Randy Cate were the parents of the victim, C.C., who was eleven years old at the time of this crime.[1] On December 7, 2003, Mrs. Cate was preparing dinner when she heard her husband talking to C.C. about smoking cigarettes. Upon further questioning, the Cates learned that the Appellant and the codefendant had furnished C.C. cigarettes and marijuana. Upset by this information, Mr. and Mrs. Cate set out to find the two men, both of which they knew. The codefendant was a family friend, and the Cate's children had grown up with him. The Cates knew the Appellant from the mobile home park they owned and in which the Appellant's brother, Denver Collins, and his family lived.

Mr. and Mrs. Cate went to Denver Collins' trailer and asked the Appellant to step outside. Mrs. Cate testified that she slapped him and asked him, "What the hell he thought he was doing smoking pot with my 11-year old child." Mr. Cate hit the Appellant, and Mrs. Cate slapped him three or four times. The Appellant told them, "I'm sorry. I'm sorry."

After leaving the Appellant, the Cates returned to their home where Mrs. Cate found C.C. lying on the floor in a fetal position, crying. He said, "They made me put their dicks in my mouth," and begged his mother not to be mad at him. She called the police and stayed with C.C. while Mr. Cate went back to confront the Appellant a second time. Mr. Cate told the Appellant he wasn't going to cause any trouble but that he just wanted the truth. When Mr. Cate asked the Appellant, "Did you make my son suck your dick?," the Appellant answered, "Yes, I did."

Mrs. Cate acknowledged that C.C. had been caught smoking cigarettes before and had lied about it. She said, "I'm not going to sit here and tell you he doesn't lie." Mr. Cate testified that he had also caught his son in some lies on previous occasions; however, he stated that his son would tell the truth if pressed to do so.

C.C. testified that he has known the Appellant for about two years and the codefendant for about seven years. He went to Denver Collins' trailer where he watched television with the Appellant and the codefendant. The group all smoked cigarettes, and the Appellant and the codefendant gave C.C. some hits off a marijuana cigarette. At some point, the Appellant began showing his penis. C.C. asked for a cigarette, at which point the Appellant said, "[G]ive me a blow job. I'll give you a cigarette." The Appellant pushed C.C.'s head down on his penis for about ten or fifteen seconds. The codefendant was sitting on the other side of C.C., and he also pushed C.C.'s head down on his penis. It was in C.C.'s mouth for about five seconds. When C.C. got up, they threatened to kill him if he told anyone. He stayed there until he wanted to go home.

C.C. was taken to the hospital by his parents for a medical examination. Detective Mark Turner of the Sevier County Sheriff's Department spoke with the doctor at the hospital and was informed that the examination revealed no evidence that C.C. was sexually molested or injured.

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[1] In order to protect the identity of minor victims of sexual abuse, it is the policy of this court to refer to the victims by their initials. *State v. Schimpf*, 782 S.W.2d 186, 188 n.1 (Tenn. Crim. App. 1989).

However, Turner later interviewed the codefendant Olson at the sheriff's department, and he admitted that C.C. performed oral sex on him.

The Appellant called witnesses, in addition to testifying in his own behalf. Aaron Doll testified that he was at Denver Collins' residence on December 6, 2003, and he remembered C.C. coming to visit and that they watched a movie. Doll testified that he was there when C.C. arrived and when he left. He further related that C.C. had asked each of them for a cigarette and that he did not witness any sexual activity between the Appellant or the codefendant with the victim. Doll admitted, however, that he was unaware of what occurred both before or after he left or what happened on the next day.

The Appellant's brother, Denver Collins, testified that C.C. told him that he had offered to give the Appellant and the codefendant a blow job if they gave him a cigarette but that they hadn't done anything to him. Denver Collins did not inform anyone at the sheriff's department, the police department, or the district attorney's office of this statement.

The twenty-three-year-old Appellant testified that the events took place on December 6, 2003, as opposed to the December 7th date, as related by Detective Turner. He stated that he was present at Denver Collins' trailer on December 6th, along with C.C., the codefendant, and Doll. The Appellant testified that C.C. smoked marijuana while at the trailer. The Appellant also related, "[C.C.] started touching everybody in the crotch and said, 'Give me a cigarette and I'll give you a blow job.'" According to the Appellant, they asked C.C. to leave three or four times. The Appellant insisted that he did not ask C.C. for a blow job and that he did not have any sexual contact with him. He further stated that Mr. and Mrs. Cate came to the trailer to talk with him. They asked if he had given C.C. cigarettes, and he admitted that he had. The Appellant admitted to them that C.C. had also picked up a pipe on a table and smoked marijuana. The Cates started beating the Appellant and ordered him to get off their property. The Appellant was injured from the Cates' attack: his eye was swollen, he had bruises on his ribs and bruises on his hands. During a second visit, Mr. Cate asked him if he had sexually assaulted C.C. and he said, "No."

Analysis

I. Sufficiency of the Evidence

The Appellant asserts there is insufficient evidence from which a rational trier of fact could have found, beyond a reasonable doubt, that he committed the offense of rape of a child. He asserts that the proof establishes that C.C. was lying to his parents about the offense in an attempt to escape punishment for smoking cigarettes and marijuana. He believes that Mr. and Mrs. Cate's testimony was incredulous based upon the fact that they beat him when they learned he gave C.C. cigarettes but did not assault him when they heard that he had sexually molested C.C. Moreover, there is no medical evidence of sexual activity in the record. Contrarily, the State asserts there is sufficient evidence to support the Appellant's conviction.

Our standard of review on a challenge to the sufficiency of the evidence is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *State v. Godwin*, 143 S.W.3d 771, 775 (Tenn. 2004). When reviewing the evidence, "the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom." *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000). "Questions regarding the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court does not re-weigh or re-evaluate the evidence." *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003).

The offense of rape of a child is defined as "the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if such victim is less than thirteen (13) years of age." T.C.A. § 39-13-522 (2003). "'Sexual penetration' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required." T.C.A. § 39-13-501(7) (2003).

We conclude that the evidence, when view in the light most favorable to the State, is sufficient to support the Appellant's conviction for rape of a child. C.C. testified that he had known the Appellant for two years and went to Denver Collins' trailer on December 7th. The Appellant and the codefendant were at the residence watching television. They all smoked cigarettes, and the Appellant admitted that C.C. smoked marijuana at the trailer. When C.C. asked the Appellant for a cigarette, the Appellant said, "Give me a blow job. I'll give you a cigarette." The Appellant then pushed C.C.'s head down on his penis for ten or fifteen seconds. When Mr. Cate learned of the Appellant's conduct, he confronted the Appellant, and the Appellant admitted that he made C.C. "suck [his] dick." This evidence is more than sufficient to allow a rational juror to conclude, beyond a reasonable doubt, that the Appellant committed the offense of rape of a child.

II. Admission of the Appellant's and the Codefendant's Statements

a. Timeliness of Providing Redacted Copies of the Appellant's Statement

The Appellant asserts that "[t]he Trial Court erred by refusing to exclude the [Appellant's] statements when the Prosecution did not comply with the Trial Court's order to provide a redacted statement within the time frame of the Trial Court's order." The Appellant argues that the untimely production of the redacted statement "severely prejudiced" his defense at trial. The record reflects that Detective Turner interviewed both the codefendant and the Appellant during his investigation of the case. However, at no time during Detective Turner's testimony did he make reference to any statement made by the Appellant to him during the interview. Indeed, Detective Turner never indicated that the Appellant ever gave a statement to law enforcement officials. Moreover, the Appellant's redacted statement, which is challenged upon grounds of untimeliness, is not included in the record.

In *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620 (1968), the Supreme Court held that "[a] defendant may be prejudiced by the admission in evidence against a co-defendant of a statement or confession made by that co-defendant. This prejudice cannot be dispelled by cross-examination if the co-defendant does not take the stand. Limiting instructions to the jury may not in fact erase the prejudice." *Bruton*, 391 U.S. at 132, 88 S. Ct. at 1625-26.

The Appellant and the codefendant acknowledged that, in June, 2004, the State responded to their discovery requests, and they were provided full access to the district attorney's file, including each of their statements given to law enforcement officials. On October 12, 2004, two days before the trial, the Appellant and the codefendant objected to the introduction of each other's statements, and the court ordered the State to redact each statement in accordance with *Bruton*. The trial court ordered the State to provide the redacted statements by October 13, 2004. On the morning of trial, October 14, 2004, the Appellant and the codefendant objected to the introduction of the statements because they had not been provided with a redacted copy on the 13th as instructed by the trial court's order. The trial court ruled:

> [The] Court will take judicial knowledge that yesterday morning --- it's on the record — that Mr. Hawkins [Assistant Attorney General] was here, was here all day, had those redacted statements to present to defense counsel. . . . Mr. Gray [the Appellant's attorney] I think you were here yesterday. Mr. Hawkins had them. . . . So your objection on that basis is overruled.

First, the record reflects that the State never made reference to, introduced, or attempted to introduce the Appellant's redacted statement at trial. Second, as found by the trial court, the Appellant's redacted statement was made available to the Appellant, as required by the trial court's ruling.[2] This issue is without merit.

b. Objection to the Codefendant's Statement Based on *Crawford v. Washington*

The Appellant further asserts that the trial court abused its discretion when it overruled his objection to Detective Turner's testimony regarding the codefendant's statement at trial.[3] The Appellant asserts the admission of the codefendant's statement violated his right of confrontation as interpreted by the Supreme Court in *Crawford v. Washington*, 541 U.S. 26, 124 S. Ct. 1354

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[2] The codefendant Olson raised this identical issue in the direct appeal of his conviction. In denying relief, this court summarily held: "We conclude the state did not violate the trial court's order to disclose to the defendant a redacted statement of his confession twenty-four hours before the trial." *Bruce E. Olson*, No. E2005-00663-CCA-R3-CD.

[3] The Appellant and the codefendant were tried in a joint trial pursuant to Rule 8 of the Tennessee Rules of Criminal Procedure. This rule requires mandatory joinder of offenses "if the offenses are based upon the same conduct or arise from the same criminal episode and if such offenses are known to the appropriate prosecuting official at the time of the return of the indictment." Tenn. R. Crim. P. 8(a). This rule permits the State to join two defendants in the same indictment, or to consolidate separate indictments, if the offenses are of the same or similar character. Tenn. R. Crim. P. 9(b).

(2004). The State asserts that the admission of the codefendant's statement did not violate the Appellant's right to confrontation because the statement did not make any reference to the Appellant.

At trial, Detective Turner introduced a written statement and played a portion of a tape recorded statement given by the codefendant in an interview with Turner at the Sheriff's Department. Both statements were redacted to remove any reference to the Appellant.

When the Appellant objected to a portion of the tape recording,[4] the trial court ruled:

> Didn't detect that there was anything objectionable there. It was a matter of a word or two, but I cannot see, from what I heard, that there was any reflection in any way that incriminated or cast any negative — negatives on your client.

The codefendant's written statement, as read to the jury, is as follows:

> It took place at Denver's house. About one hour later [C.C.] asked me to give him another cigarette. I told him to come over here, so he did. He took — he took my penis and put it in — put the head of my penis in his mouth. It lasted about one second. I pushed his head away, and I got a — I got a cigarette and lit it and started to smoke.

Following the introduction of the statement, the trial court gave the following limiting instruction:

> Ladies and gentlemen, as I — I will instruct you later in the final charge, but in general, I will instruct you that evidence that is introduced as to one Defendant can only be used and considered as to that Defendant. So bear in mind that, as the evidence comes in — and some has already come in — when it relates to one Defendant only, you may consider that only as to that Defendant.

In *Crawford v. Washington*, 541 U.S. 36, 68, 124 S. Ct. 1354, 1374 (2004), the Supreme Court held that the admission of "testimonial [hearsay] evidence," offered to prove the truth of the matter asserted, violates the Confrontation Clause of the Sixth Amendment unless the declarant is unavailable and the defendant had a prior opportunity for cross-examination. *Crawford* does not prohibit the introduction of certain statements which are admissible under traditional hearsay rules. However, if they constitute "testimonial evidence," their admission violates the right of confrontation unless the *Crawford* requirements are satisfied. *Id*. In this case, the codefendant's statements are specifically designated as "testimonial evidence" by *Crawford*, which states: "Whatever else the term [testimonial evidence] covers, it applies at a minimum to . . . police interrogations." *Id*. In the

[4]The court reporter did not transcribe the tape recording as it was played to the jury; thus, our review of that recording is precluded.

Appellant's case, the declarant was the codefendant, who was unavailable because he invoked his Fifth Amendment right not to testify.

We do not find anything in *Crawford*, however, which would restrict the holding in *Richardson v. Marsh*, 481 U.S. 200, 211, 107 S. Ct. 1702, 1709 (1987), that "[t]he Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when . . . the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence." *Id.* In this case, the codefendant's statement was redacted to eliminate any reference to the Appellant, and the jury was instructed that it could only consider the codefendant's statement against the codefendant. The core issue addressed by the Court in *Crawford* was the introduction of "testimony evidence [which] is at issue" in which a defendant is denied the right of confrontation. Because the codefendant's statement included no evidence at issue with the Appellant's position of innocence, the Appellant's Sixth Amendment right was not implicated.

The Appellant asserts that the codefendant's statement indicated that they "had acted as accomplices [and] the jury was more likely to believe in the guilt of the Appellant based on the statements of the codefendant." However, the Confrontation Clause does not bar the use of a properly redacted codefendant's statement which is not incriminating on its face but becomes so only when linked with other evidence introduced later at trial. *Richardson*, 481 U.S. at 208, 107 S. Ct. at 1707-08. Accordingly, we reject the Appellant's *Crawford* challenge.

III. Failure to Disclose Exculpatory Statements

Next, the Appellant argues that the State withheld exculpatory evidence in violation of *Brady v. Maryland*. The Appellant asserts that the trial court abused its discretion when it denied his motion for a mistrial on the ground that he had been denied due process by the State's failure to provide him with exculpatory evidence, namely the test results of C.C.'s medical examination. Detective Turner testified that he contacted the hospital regarding C.C.'s test results and was informed by the doctor "that there was no evidence that they could find of [the assault]," and, further, that the hospital had not preserved the test samples. The Appellant asserts that the test results are favorable to his case because they are consistent with his position that the sexual assault did not occur. The Appellant and the codefendant filed a joint motion for new trial in which they asserted "that the State failed to comply with the Tennessee Rules of Criminal Procedure regarding discovery, including but not limited to: . . . The failure to notify the defense of relevant medical evidence." The State asserts that the trial court properly denied the motion for a mistrial because the Appellant failed to prove a violation of *Brady*.

Every criminal defendant is guaranteed the right to a fair trial under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the "Law of the Land" Clause of Article I, section 8 of the Tennessee Constitution. *See, e.g. State v. ex rel. Anglin v. Mitchell*, 596 S.W.2d 779, 786 (Tenn. 1980). "To facilitate this right, a defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is either material to guilt or

relevant to punishment." *State v. Ferguson*, 2 S.W.3d 912, 915 (Tenn. 1999). This fundamental principle of law is derived from the landmark case *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), in which the United States Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87, 83 S. Ct. at 1196-97. Evidence that is "favorable to the accused" includes evidence that is deemed to be exculpatory in nature and evidence that could be used to impeach the State's witnesses. *State v. Walker*, 910 S.W.2d 381, 389 (Tenn. 1995); *State v. Copeland*, 983 S.W.2d 703, 706 (Tenn. Crim. App. 1998); *see also United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 3380 (1985).

The "prosecution is not required to disclose information that the accused already possesses or is able to obtain." *State v. Marshall*, 845 S.W.2d 228, 233 (Tenn. Crim. App. 1992). However, "the prosecutor is responsible for 'any favorable evidence known to the others acting on the government's behalf in the case, including the police.'" *Stickler v. Greene*, 527 U.S. 263, 275 n.12, 119 S. Ct. 1936, 1940 (1999) (citing *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S. Ct. 1555, 1568 (1995)). Nevertheless, there is "no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case." *Walker*, 910 S.W.2d at 389 (quoting *Moore v. Illinois*, 408 U.S. 786, 795, 92 S. Ct. 2562, 2568 (1972)).

The Tennessee Supreme Court has held that in order to establish a *Brady* violation, four elements must be shown by the defendant:

(1) that the defendant requested the information (unless the evidence is obviously exculpatory, in which case the State is bound to release the information whether requested or not);
(2) that the State suppressed the information;
(3) that the information was favorable to the accused; and
(4) that the information was material.

State v. Edgin, 902 S.W.2d 387, 390 (Tenn. 1995); *see also Walker*, 910 S.W.2d at 389.

The Appellant moved for a mistrial when Detective Turner testified that the medical test did not contain any evidence of a sexual assault. The court denied the Appellant's motion and stated:

> This officer testified that he talked to the doctor. He did not receive reports, he did not receive evidence. Whatever examinations were performed were performed at the hospital by the hospital. Those records are available to either party by subpoena. That information, from what I have heard, that this young man went to the hospital, was examined at the hospital.

> The State has provided no test results because the State doesn't have any test results. Those test results, whatever they are, are available to either side by subpoena.

We find nothing in the record to contradict the trial court's findings. Moreover, the test results were not material to the Appellant's case, as Detective Turner testified that he did not expect that there would be any medical evidence in this case because C.C. did not indicate that the Appellant ejaculated in his mouth.

When the Appellant's codefendant raised this issue on appeal, another panel of this court found that the codefendant had not proven that the State "suppressed the information," which is one of the factors which must be shown to establish a due process violation. This court held:

> Initially, we note that the record reflects that the state had provided both defendants "open file discovery" in this case. However, on appeal, the record is devoid of what evidence was actually disclosed to the defense. In this regard, we note that the defendant failed to introduce into the record at the trial or the motion for new trial hearing any evidence in the form of affidavit, testimony, or otherwise alleging the state suppressed the results of the tests. We conclude the defendant has failed to prove by a preponderance of the evidence that the state suppressed the results of the medical tests, and he is not entitled to relief on this issue.

Bruce E. Olson, No. E2005-00663-CCA-R3-CD. Likewise, we conclude the issue is without merit in this case.

CONCLUSION

Based upon the foregoing, the Appellant's conviction for rape of a child is affirmed.

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DAVID G. HAYES, JUDGE